IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10088 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KAMAL MUKESH KAHAR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10088 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 30th Sept. 2001 passed by the Commissioner of Police, Surat City, Surat in exercise of power under

Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act and recorded statements of two anonymous witnesses on 16.9.2001 and 17.9.2001 and verified the same on 29.9.2001. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that a representation was made on behalf of the detenu on 7.10.2001, which was received by the detaining authority on 11.10.2001. It was forwarded to the State Government and the State Government decided the same on 17.10.2001. The decision of rejection was communicated to the detenu by communication dated 24.10.2001 received by the detenu on 1.11.2001. Learned Advocate for the petitioner Mr. Prajapati places on record the original communication received by the detenu on 1.11.2001 and submits that there is delay in communication which has affected the right of the detenu. He relied upon the decision in the case of Harish Pahwa Vs. State of U.P., reported in AIR 1981 SC 1126.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the rival side contentions, the continued detention of the detenu would be affected only on account of delay in communicating the decision on the representation in light of the decision of the apex Court in the case of Harish Pahwa Vs State of U.P. (supra). In that case the order was quashed when there was delay of only 2 days. In the instant case, there is a delay of more than 2 weeks and therefore, the delay in communication has resulted into infringement of the right of the detenu of making an effective representation. The order of detention therefore deserves to be quashed.

6. The petition is therefore, allowed. Order of detention dated 30th September, 2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu kamal Mukeshbhai Kahar be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas